



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Concord Education Association,  
NEA-New Hampshire

Complainant

v.

Concord School Board

Respondent

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Concord School Board

Complainant

v.

Concord Education Association,  
NEA-New Hampshire

Respondent

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Case No. T-0220-37

Decision No. 2005-089

Case No. T-0220-38

REPRESENTATIVES

For the Complainant: Steven R. Sacks, Esquire, NEA -NH

For the Respondent: Edward M. Kaplan, Esq., of Sulloway & Hollis, PLLC

## BACKGROUND

The Concord Education Association, NEA-New Hampshire, (hereinafter "Association") filed an unfair labor practice complaint on June 27, 2005 and a subsequent amendment on July 7, 2005 to its complaint requesting, among other things, for an immediate cease and desist order to be issued from the PELRB against the Concord School Board (hereinafter "School Board"). The complaint, as amended, alleged that the School Board had undertaken a unilateral action in ordering guidance counselors to work on days during the summer months in excess of the parties negotiated work year. The Association requested exigent interim relief to relieve the guidance counselors from management's directive immediately alleging irreparable harm to those who had to perform services during the summer months.

The PELRB ordered the parties to attend an expedited hearing and informed the parties by formal notice that the hearing would call for offers of proof only at this exigent stage in proceedings. The hearing was scheduled to be conducted on July 12, 2005.

The School Board filed its own unfair labor practices complaint against the Association on July 11, 2005 also seeking an immediate cease and desist order against the Association asking the PELRB to prohibit the guidance counselors from refusing to work during the summer. Additionally, the School Board filed its response to the Association's original complaint and a separate motion requesting a full evidentiary hearing on the matter, including testimony, before the Board rendered an interim order.

A hearing was conducted at the offices of the PELRB on July 12, 2005 at which both parties were present and were represented by counsel. The two complaints and the requests for interim relief therein requested were consolidated by the Board for purposes of the hearing. At the outset, the Board first heard argument and rebuttal on the School Board's motion for evidentiary hearing. At the conclusion of counsels' respective arguments, the Board took the matter under advisement and proceeded to hear offers of proof from the respective counsel on the requests for immediate cease and desist orders.

## ORDER

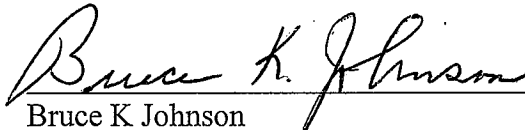
At the conclusion of the offers of proof and legal arguments of counsel, the Board issues the following interim orders:

1. The School Board's motion for a full evidentiary hearing is denied on the basis that following the presentation of offers of proof, the Board does not find that there are relevant material issues in dispute, i.e. the offers of proof indicate that the parties are in essential agreement on the issues relevant to a decision by the board. Further, it appears from the content of the representations of counsel that this dispute presents more of an issue of law than a dispute of relevant facts.

2. Each party's request for an interim cease and desist order is denied on the basis that neither party has established that they have a reasonable likelihood of prevailing on the merits, nor that either party is subject to irreparable harm.
3. Each party is to file a pre-hearing legal memorandum addressing the basis for their respective positions alleging violations of the Public Employee Labor Relations Act (RSA 273-A:5) with the Board forty-eight (48) hours prior to the final hearing on the merits. Also, the parties are to confer for purposes of composing a statement of agreed facts to be submitted to Board also forty-eight (48) hours prior to the final hearing on the merits.
4. The Board will schedule a final evidentiary hearing on the merits, or solely legal arguments upon the agreement of the parties after considering the facts relevant to resolution of this dispute, within the next three weeks.
5. Any motion for continuance filed by either party will not be looked upon with favor unless consented to by the other party.

So ordered.

Signed this 14th day of July, 2005.

  
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Bruce K Johnson  
Alternate Chairperson

By unanimous vote. Alternate Chairman Bruce K Johnson presiding with Board Members James M. O' Mara and E. Vincent Hall also voting.

Distribution:  
Steven R. Sacks, Esq.,  
Edward Kaplan, Esq.